

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

SENDMYGIFT.COM, INC.,

Debtor.

ORDER RE: STATUS OF CASE, AND
FURTHER PROCEEDINGS

BKY 00-35021

This is a Chapter 11 case, in which the Debtor wishes to proceed with a plan of reorganization. By separate order entered today, the Court made multiple rulings on the adequacy of the Debtor's proposed disclosure to creditors. The rulings will require substantial amendments to the last version of a disclosure statement that the Debtor's counsel put before the Court as an exhibit received at a hearing under 11 U.S.C. § 1125.

If the Debtor intends to go forward to a confirmation hearing, it is appropriate to fix a procedure by which the Debtor's response to these rulings can come before the Court for a final vetting, before a final version of a disclosure statement is approved.

One other matter requires attention, in tandem with any further proceedings in a reorganization mode. The Debtor ceased operations as a going concern early in this case, and went through an extended process of liquidating various assets. It has not been as simple as that, however. Since the bulk of the liquidation was completed, the Debtor has commenced several adversary proceedings. The record made for several hearings and conferences in them has raised substantial questions. The Debtor's principal may have made use of assets of the estate outside of the ordinary course of business without obtaining court approval, on one or more occasions. The sales of the Debtor's two major real property holdings were structured and administered in a way that has generated multiple disputes with the purchasers of the properties. This has resulted in litigation and the expenditure of estate assets to prosecute and defend claims made in that litigation.

These circumstances raise the possibility of other irregularities in the pre-confirmation administration of the estate by the Debtor. The Debtor, of course, is vested with the status of a trustee, 11 U.S.C. § 1107, and hence has had fiduciary responsibilities throughout this case.

The United States Trustee has had a motion for conversion of this case pending since July 17, 2003. However, his counsel has continued this motion *sine die*, apparently pending the outcome of the proceedings under § 1125. Various revelations in recent hearings question the propriety of carrying this motion on to the date of a confirmation hearing, at least until the Debtor has given some accounting for the anomalous symptoms that have cropped up ever more strongly over recent months.

To address both aspects of the posture of this case,

IT IS HEREBY ORDERED:

1. No later than *October 27, 2004*, the Debtor and its counsel shall submit specimen copies of the Debtor's proposal for the final version of a disclosure statement and a plan. These documents shall be filed, without signature on behalf of the Debtor, as an exhibit to an affidavit by the Debtor's counsel, after service on counsel for the United States Trustee and all counsel who made objection to prior versions of the disclosure statement. The specimen copies shall be labeled as proposed third versions of the respective documents.

2. On *November 10, 2004, at 9:30 a.m.*, the Court will convene a hearing for the taking of any final comments on that proposed final version of the disclosure statement. If appropriate, and if in particular this case is to proceed as one for the reorganization of the Debtor, the Court will direct the filing of final executed versions of a disclosure statement and a plan, once the Debtor has met the rulings in today's order.

3. Prior to the hearing set by Term 2, counsel for the United States Trustee shall thoroughly evaluate the Debtor's administration of the estate thus far; the structure of its current

proposal for reorganization; and the best interests of the creditors of the Debtor, as between liquidation under Chapter 7 and reorganization under a confirmed plan. On request, the Debtor and its counsel shall furnish all information requested by the United States Trustee that is reasonably related to that evaluation. Counsel shall be prepared to state the United States Trustee's findings and position on those matters at the hearing. If the United States Trustee wishes to prosecute his motion for conversion at the hearing, the Court shall give written notice of that on all counsel who have noted appearances for this case, and shall serve and file that notice, by *November 1, 2004*.

4. At the hearing, the Court may then take up any such renewed motion for conversion, taking such evidence as the parties may offer, or may hold the motion over to a future date for a fuller development of the record.

BY THE COURT:

A handwritten signature in black ink, appearing to read "1E1 Gregory F. KisheL". The signature is written in a cursive, somewhat stylized font. To the left of the main signature, the letters "1E1" are written vertically.

GREGORY F. KISHEL
CHIEF UNITED STATES BANKRUPTCY JUDGE

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

I, Judy Brooks, hereby certify that I am judicial assistant to Gregory F. Kishel, Chief Bankruptcy Judge for the District of Minnesota; that on October 1, 2004, true and correct copies of the annexed:

ORDER

were placed by me in individual official envelopes, with postage paid; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last known addresses appearing hereinafter; that said envelopes were sealed and on the day aforesaid were placed in the United States mails at St. Paul, Minnesota, to:

OFFICE OF THE U.S. TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

SENDMYGIFT.COM INC
1400 W BROADWAY
MINNEAPOLIS MN 55411

HOILAND, DAVID JON
120 S 6TH ST STE 1100
MINNEAPOLIS MN 55402

BURT, RYAN J
HALLELAND LEWIS NILAN
220 S 6TH ST STE 600
MINNEAPOLIS MN 55402

MITCHELL, RALPH V JR
LAPP LIBRA THOMSON
120 S 6TH ST STE 2500
MINNEAPOLIS MN 55402

PETERSON, JERE and SUZANNE
c/o TECHNO FAB
1763 60TH AVE CTY RD K
OSCEOLA WI 54020

PETERSON, JEAN L
POB 46054
EDEN PRAIRIE MN 55344

and this certificate of service was made by me.

/s/ Judy Brooks
Judy Brooks

Filed on October 1, 2004 Lori Vosejpka, Acting Clerk BY jrb, Deputy Clerk
